

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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VERNICE CHARLES,

Plaintiff(s),

v.

ISDEL RUIZ SURI, et al.,

Defendant(s).

ALLSTATE INSURANCE COMPANY,

Intervenor.

Case No. 2:21-CV-1712 JCM (NJK)

ORDER

Presently before the court is plaintiff Vernice Charles's ("Charles") motion to remand this matter. (ECF No. 9). Intervenor Allstate Insurance Company ("Allstate") filed a response (ECF No. 15), to which Charles replied (ECF No. 18).

I. Background

This personal injury matter arises from a car crash (the "incident") where Charles sustained injuries from a collision with a vehicle operated by defendant Isdel Ruiz Suri ("Suri"). Charles originally filed action against Suri and the owner of Suri's vehicle, Enterprise Leasing Company, in the Eighth Judicial District Court in Clark County, Nevada, on August 3, 2021. (*See* ECF No. 1). Allstate Insurance moved to intervene on that same day and, after the state court granted its motion, removed this matter to this court on September 16, 2021. (*Id.*).

Charles now moves to remand this matter back to state court on the ground that this court lacks subject matter jurisdiction.

...

1 **II. Legal Standard**

2 “‘Federal courts are courts of limited jurisdiction,’ possessing ‘only that power authorized
3 by Constitution and statute.’” *Gunn v. Minton*, 568 U.S. 251, 256 (2013) (quoting *Kokkonen v.*
4 *Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994)). Pursuant to 28 U.S.C. § 1441(a),
5 “any civil action brought in a State court of which the district courts of the United States have
6 original jurisdiction, may be removed by the defendant or the defendants, to the district court of
7 the United States for the district and division embracing the place where such action is pending.”
8 28 U.S.C. § 1441(a). “A federal court is presumed to lack jurisdiction in a particular case unless
9 the contrary affirmatively appears.” *Stock West, Inc. v. Confederated Tribes of Colville*
10 *Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989).

11 Upon notice of removability, a defendant has thirty days to remove a case to federal court
12 once he knows or should have known that the case was removable. *Durham v. Lockheed Martin*
13 *Corp.*, 445 F.3d 1247, 1250 (9th Cir. 2006) (citing 28 U.S.C. § 1446(b)(2)). Defendants are not
14 charged with notice of removability “until they’ve received a paper that gives them enough
15 information to remove.” *Id.* at 1251.

16 A plaintiff may challenge removal by timely filing a motion to remand. 28 U.S.C. §
17 1447(c). On a motion to remand, the removing defendant faces a strong presumption against
18 removal, and bears the burden of establishing that removal is proper. *Sanchez v. Monumental Life*
19 *Ins. Co.*, 102 F.3d 398, 403–04 (9th Cir. 1996); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566–67 (9th
20 Cir. 1992).

21 **III. Discussion**

22 Charles’s complaint alleges that defendant Suri was at the time of the incident and still is
23 a resident of Nevada. (ECF No. 1). Nevertheless, Allstate removed this matter on the basis of
24 diversity jurisdiction, alleging that Suri is a resident of Florida. (ECF No. 4 at 2). Thus, the parties’
25 dispute over remand concerns Suri’s citizenship.

26 For purposes of diversity jurisdiction, the court looks to an individual’s citizenship at the
27 time the lawsuit was filed. *See Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986). A person is a
28 citizen of the state in which they are domiciled; a person is domiciled where they reside with the

1 intention to remain indefinitely, or to which they intend to return. *Kanter v. Warner-Lambert Co.*,
 2 265 F.3d 853, 857 (9th Cir. 2001).

3 Charles argues that this court lacks subject matter jurisdiction because both Charles and
 4 Suri are citizens of Nevada. Along with his complaint, Charles provides the police report created
 5 for the incident which shows that Suri was driving with a Nevada driver's license listing a Nevada
 6 address. (ECF No. 9-1 at 4).

7 Allstate argues¹ that even if Suri was domiciled in Nevada at the time of the incident in
 8 2019, Suri was a resident of Florida when Charles first filed his action in August of 2021. (ECF
 9 No. 15 at 3). Allstate provides evidence that Suri was served in a related matter at a Florida address
 10 in July of 2020 (ECF No. 15-1 at 2), that in October of 2020, Suri claimed in an interrogatory that
 11 his then current address was that same Florida address (ECF No. 15-1 at 6), and that in October of
 12 2021, Suri's counsel, Ty Maynarich, indicated in an email to Allstate's counsel that Suri remained
 13 in Florida (ECF No. 15-1 at 14).²

14 Despite Allstate's evidence, there remains ambiguity as to whether Suri was domiciled in
 15 Nevada or Florida at the time Charles filed this action. Though Suri's acceptance of service in
 16 Florida shows that he lives in Florida, Suri's residing in Florida does not alone domicile him there.
 17 See *Kanter*, 265 F.3d at 857 ("A person residing in a given state is not necessarily domiciled there,
 18 and thus is not necessarily a citizen of that state.").

19 Similarly, Allstate's reliance on information from Suri's counsel does not remove the
 20 ambiguity of Suri's domicile. In emailing Allstate's counsel, Suri's counsel declined to commit
 21 to Suri's domicile, but instead referred to Suri's interrogatory in another matter and informed
 22 Allstate that "based on information and belief [Suri] is still a resident of Florida." (ECF No. 15-1
 23 at 14). While the interrogatory referred to does provide that Suri lived at a Florida address in
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25
 26 ¹ Typically, a defendant bears the burden of proving of establishing that removal is proper.
 27 See *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009). Here, however, intervenor
 Allstate argues on behalf of defendant Suri because Suri was not served at the time of removal.

28 ² While not mentioned in Allstate's response, Charles served Suri with the summons for
 this matter in December of 2021, at that same Florida address. (ECF No. 67).

1 October of 2020, it does not provide that Suri intended to live in Florida indefinitely or that Suri
 2 did not intend to return to Nevada. *See Kanter*, 265 F.3d at 857.

3 Even if Allstate has shown that Suri currently lives in Florida, none of this evidence proves,
 4 or even claims, that Suri was domiciled in Florida—and not Nevada—at the time Charles first filed
 5 this action. Given that Suri—who has appeared in this matter and disputed service of process
 6 (ECF No. 64)—has not joined Allstate’s motion or otherwise informed this court as to where Suri
 7 is domiciled, ambiguity remains as to whether Suri is domiciled in Nevada or Florida.

8 In the Ninth Circuit, there is a “strong presumption against removal jurisdiction” which
 9 leads the court to resolve “all ambiguity in favor of remand to state court.” *Hunter v. Philip Morris*
 10 *USA*, 582 F.3d 1039, 1042 (9th Cir. 2009) (quoting *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th
 11 Cir.1992)). Thus, for purposes of this motion, the court finds that Suri is domiciled in Nevada.
 12 Accordingly, unless Allstate shows that an exception to the standard rules regarding removal
 13 applies to this matter, removal was improper. *See* 28 U.S.C. 1447(c).

14 Allstate argues that even if Suri is domiciled in Nevada, removal was proper as a “snap”
 15 removal because Suri’s diversity was not relevant until he was served, which he was not when
 16 Allstate removed this matter. (ECF No. 15 at 7). Charles argues that “snap” removals are improper
 17 and that Allstate’s removal of this matter violated the forum defendant rule. (ECF No. 9 at 3–4).
 18 Notwithstanding the parties’ arguments, this court need not—and does not—hold whether
 19 Allstate’s snap removal was proper in this matter.

20 For matters removed from state court, “[i]f at any time before final judgment it appears that
 21 the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C.
 22 § 1447(d). Here, the complaint alleges that Suri is a Nevada resident. Despite having been served
 23 and appearing in this matter, Suri has not refuted that allegation. As discussed above, Allstate fails
 24 to show that Suri is not domiciled in Nevada. Therefore, the matter before the court appears to be
 25 a dispute primarily between two Nevadans.

26 Accordingly, this court either lacks subject matter jurisdiction now or never had it to begin
 27 with. Regardless, this matter must be remanded to state court. *See* 28 U.S.C. § 1447(c).

28 . . .

1 **IV. Conclusion**

2 Accordingly,

3 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Charles's motion to
4 remand (ECF No. 9) be, and the same hereby is, GRANTED. All other pending motions are denied
5 as moot.

6 IT IS FURTHER ORDERED that the matter of *Charles v. Suri et al.*, case number 2:21-
7 cv-01712-JCM-NJK, be, and the same hereby is, REMANDED to the Eighth Judicial District
8 Court in Clark County, Nevada.

9 DATED January 24, 2022.

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12 UNITED STATES DISTRICT JUDGE
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